

REMARKS

With this amendment, Claims 1-27 and 29 have been cancelled. Claim 28 has been amended, and new Claims 30-40 have been added. Support for the claim amendments can be found throughout the specification and in the original claims as filed.

Applicants respond below to the specific rejections raised in the final Office Action mailed April 20, 2009. For the reasons set forth below, Applicants respectfully traverse.

Rejection of Claims 1-27 under 35 U.S.C. §102(b) as being anticipated by WO 98/01394

Claims 1-27 were rejected under 35 U.S.C. §102(b) as being anticipated by WO 98/01394 (Cordemans et al.) Applicants maintain that Claims 1-27 are patentable over the cited reference at least because the Examiner has not identified disclosure of each limitation of independent Claims 1 and 14 in the cited reference. However, without acquiescing to the Examiner's rejection, and solely in the interest of advancing prosecution and expediting allowance of the instant claims, Applicants have cancelled Claims 1-27, thereby rendering the objection moot.

Claims 28 is Non-Obvious under 35 U.S.C. §103(a) over WO 98/01394

Claims 28 and 29 were rejected under 35 U.S.C. §103(a) as being unpatentable over WO 98/01394 Cordemans et al. According to the PTO, the claims differ from Cordemans et al. by reciting that the method includes emitting ultrasound at a specific power level, and the device is configured to emit ultrasound at the specific power level, respectively. The PTO concludes, *intra alia*, that it would have been an obvious matter of process optimization to one skilled in the art to arrive at the claimed specific power level utilized.

Independent Claims 28 and the claims depending therefrom recite a method and device, respectively, for treating a physiological medium, *intra alia*, at a power level that is about 7mW/cm^3 . As detailed in the specification, prior art ultrasounds typically utilize relatively high ultrasound power levels. See, e.g. Paragraph [0005], and U.S. Patent No. 4,971,991 cited therein. Applicants have further discovered that a power level of about 7mW/cm^3 or lower is particularly useful to produce reactive oxygen species, which are toxic to hyperproliferative cells.

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Furthermore, as described in Paragraph [0039] of the application, temperature control can be important in these applications. Thus, Claim 28 has been amended to recite that the compartment is placed in a water bath and the ultrasound is applied to the bath instead of directly to the compartment. This is illustrated in Figure 2 of the application. The low power ultrasound and water bath maintain the temperature at less than 40 degrees C. These features are not taught in WO 98/01394.

Rejection of Claims 1-29 on the Ground of Non-Statutory Obviousness-Type Double Patenting

Claims 1-29 were rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-11 of U.S. patent No. 6,540,922, Claims 1-11 and 23 of U.S. Patent No. 6,736,979 and Claims 1-11 of U.S. Patent No. 7,267,778. Claims 1-29 were provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-35 of co-pending Application Ser. No. 11/833,878. For the same reasons as expressed above with respect to WO 98/01394, the pending claims are not obvious over the claims of these patents and applications.

No Disclaimers or Disavowals

Although the present communication may include alterations to the application or claims, or characterizations of claim scope or referenced art, Applicant is not conceding in this application that previously pending claims are not patentable over the cited references. Rather, any alterations or characterizations are being made to facilitate expeditious prosecution of this application. Applicant reserves the right to pursue at a later date any previously pending or other broader or narrower claims that capture any subject matter supported by the present disclosure, including subject matter found to be specifically disclaimed herein or by any prior prosecution. Accordingly, reviewers of this or any parent, child or related prosecution history shall not reasonably infer that Applicant has made any disclaimers or disavowals of any subject matter supported by the present application.


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Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

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